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Attorneys for Federal Deposit Insurance Corporation as Receiver
 for Defendant IndyMac Federal Bank, FSB

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

EDEN GARDEN LLC, a California limited
 liability company; ALI K. AMIDY, an
 individual; GUITI NAHAVANDI AMIDY, an
 individual; CENTRA NET INVESTMENT
 LLC, a California limited liability company,

Plaintiffs,

v.

INDYMAC VENTURE, LLC, a Limited
 Liability Company; FEDERAL DEPOSIT
 INSURANCE CORPORATION, as
 Conservator of IndyMac Federal Bank, FSB,
 and DOES 1-10,

Defendants.

No. CV-11-02356-JF

*This matter assigned to Honorable Jeremy
 Fogel, Courtroom No. 3, for All Purposes*

**DECLARATION OF JACK W.
 SCHWARTZ, JR. IN SUPPORT OF
 MOTION OF FEDERAL DEPOSIT
 INSURANCE CORPORATION AS
 RECEIVER OF DEFENDANT
 INDYMAC FEDERAL BANK, FSB TO
 DISMISS CLAIMS
 [F. R. C. P. Rules 12(b)(6) and 12(b)(1)]**

Date: August 5, 2011
 Time: 9:00 a.m.
 Dept: Courtroom No. 3
 Judge: Honorable Jeremy Fogel

Filed Concurrently herewith:

1. Notice of Motion
2. Memorandum of Points and Authorities;
3. Request For Judicial Notice;
4. Declaration of James P. Gazdecki; and
5. [Proposed] Order - Lodged herewith

I, Jack W. Schwartz, Jr., declare:

1. I am a Senior Counsel with Burnham Brown, counsel of record for the Federal
 Deposit Insurance Corporation as Receiver for Defendant IndyMac Federal Bank, FSB ("FDIC

1 Corporation As Receiver of Defendant IndyMac Federal Bank, FSB, to Dismiss Claims. I
2 have personal knowledge of the facts set forth herein and if called as a witness, I could and
3 would competently testify to the matters set forth below.

4 2. In support of the subject Motion, I conducted a database review of the County
5 of Santa Clara, State of California, Official Records. Attached hereto as Exhibit "A" is a true
6 and correct copy of a Trustee's Deed Upon Sale ("*Trustee's Deed*") which I obtained as a
7 result of, and from, my search of these Official Records. I am informed and believe that the
8 conveyance made pursuant to the Trustee's Deed is the transaction upon which Plaintiff seeks
9 an Order vacating the sale upon which the Trustee's Deed was conveyed.

10 3. On May 12, 2011 and May 26, 2011, I telephoned Plaintiffs' counsel, W.
11 Kenneth Howard for the purpose of discussing the Plaintiffs' Complaint against the FDIC –
12 Receiver. In each instance, I was only able to leave a voicemail message asking him to call me
13 back.

14 4. Also on May 26, 2011, I wrote a letter to Plaintiffs' counsel in which I informed
15 him that his clients' continued prosecution of their lawsuit against the FDIC Receiver was a
16 futile act because of their failure to file an administrative claim and the FDIC Board of
17 Directors' determination that the IndyMac Federal Bank receivership estate will lack funds to
18 pay general creditors. I enclosed a memorandum of points and authorities which states the law
19 upon which the FDIC – Receiver's position is supported and requested that he contact me to
20 advise as to whether his clients would agree to voluntarily dismiss their lawsuit against the
21 FDIC – Receiver. A true and correct copy of this letter, without the enclosed memorandum of
22 points and authorities, is attached hereto as Exhibit "B".

23 5. As Plaintiffs' counsel had not responded to my telephone message of May 12,
24 2011 or my telephone message or letter of May 26, 2011, on June 3, 2011, I again telephoned
25 him and, when a person did not answer the telephone, I left another message for him to call me.

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1 6. On June 9, 2011, I again attempted to contact the Plaintiffs' counsel to
2 determine an agreeable date for a hearing on the FDIC – Receiver's Motion To Dismiss. Both
3 telephone numbers I called, the one on the first page of the Plaintiffs' State Court Complaint
4 [(408) 379-1904] and the telephone number listed for attorney with the California State Bar's
5 website [(408) 249-4200] and each number was no longer in service. I then dialed the facsimile
6 number for the Plaintiff's counsel as listed on the first page of the Plaintiffs' State Court
7 Complaint [(408) 379-1902] and received a message that that number was no longer in service.

8 7. To date, Plaintiffs' counsel has not responded to any of my attempts to contact
9 him.

10 Executed this 9th day of June, 2011, at Oakland, California.

11 I declare under penalty of perjury under the laws of the United States of America that
12 the foregoing is true and correct.

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16 JACK W. SCHWARTZ, JR.
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EXHIBIT "A"

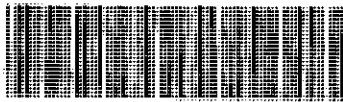
Recording Requested
by and

WHEN RECORDED MAIL TO
IMV 7 CA LLC
c/o OneWest Bank, FSB
Attn: Srijin Bandyopadhyay
2450 Broadway, Suite 500
Santa Monica, CA 90404

MAIL TAX STATEMENTS TO
same as above

DOCUMENT: 21081536

Pages: 2



Fees	18.00
Taxes	
Copies	
AMT PAID	18.00

REGINA ALCOMENDRAS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
Bank

RDE # 004
2/11/2011
12:12 PM

Space above this line for recorder's use only

Trustee Sale No. 1567-40 Loan No. 49-0320000 Title Order No. 080063760

TRUSTEE'S DEED UPON SALE

APN 455-52-036 through 053 T.R.A. No. 17 030

The undersigned grantor declares:

- 1) The Grantee herein was the foreclosing beneficiary.
- 2) The amount of the unpaid debt together with costs was..... \$6,603,823.30
- 3) The amount paid by the grantee at the trustee sale was \$3,043,241.00
- 4) The documentary transfer tax is \$-0-
- 5) Said property is in the city of San Jose

1st position
[Signature]

and CHICAGO TITLE COMPANY, a California corporation (herein called Trustee), as the duly appointed Trustee under the Deed of Trust hereinafter described, does hereby grant and convey, but without covenant or warranty, express or implied, to

IMV 7 CA LLC, a Delaware limited liability company

(herein called Grantee), all of its right, title and interest in and to that certain property situated in the County of Santa Clara, State of California, described as follows:

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 AND 19, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "TRACT NO. 9484", AND RECORDED IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA RECORDED JUNE 16, 2005 IN BOOK 787 OF MAPS, PAGES 42 AND 43.

RECITALS:

This conveyance is made pursuant to the powers conferred upon Trustee by that certain Deed of Trust dated 09/30/2005 and executed by Eden Garden, LLC, a California limited liability company, as Trustor, and recorded on 11/08/2005 as Document No. 18668901 and Additional Advance and First Modification Agreement to the Building Loan Agreement; Promissory Note; Construction Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing and other Loan Documents recorded on 04/19/2007 as Document No. 19392640 of official records of Santa Clara County, California, and after fulfillment of the conditions specified in said Deed of Trust authorizing this conveyance.

Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the Office of the Recorder of said County, and such default still existed at the time of sale.

All requirements of law regarding the mailing of copies of notices or the publication of a copy of the Notice of Default or the personal delivery of the copy of the Notice of Default and the posting and publication of copies of the Notice of a Sale have been complied with.

Trustee Sale No. 1567-40
Loan No. 49-0320000
Title Order No. 080063760

Trustee, in compliance with said Notice of Trustee's Sale and in exercise of its powers under said Deed of Trust, sold the herein described property at public auction on 01/31/2011. Grantee, being the highest bidder at said sale, became the purchaser of said property for the amount bid being \$3,043,241.00 in lawful money of the United States, or by credit bid if the Grantee was the beneficiary of said Deed of Trust at the time of said Trustee's Sale.

DATE: 2/3/11

CHICAGO TITLE COMPANY, a California corporation

Teresa M. Drake
Teresa M. Drake, Asst. Vice President

Gwen Cleveland
Gwen Cleveland, Asst. Secretary

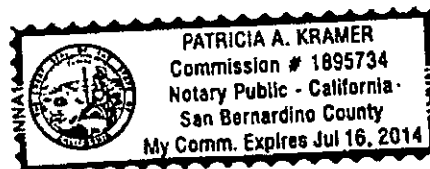
STATE OF California
COUNTY OF San Bernardino

On 2/3/11 before me, Patricia A. Kramer, a Notary Public in and for said State, personally appeared Teresa M. Drake and Gwen Cleveland, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Patricia A. Kramer
Notary Public in and for said County and State



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EXHIBIT "B"



BURNHAM | BROWN

a professional law corporation

JACK W. SCHWARTZ, JR.
jschwartz@burnhambrown.com
Direct Dial (510) 835-6832

May 26, 2011

W. Kenneth Howard, Esq.
116 East Campbell Avenue, #7
Campbell, CA 95008

Re: Eden Garden LLC v. IndyMac Venture LLC, et al.
USDC, Northern District, No. C11-02356 HRL

Dear Mr. Howard:

As you are aware, this firm represents the Federal Deposit Insurance Corporation as Receiver of IndyMac Federal Bank, FSB ("FDIC - Receiver") in the referenced matter. I have left two messages with your office, one before the removal of the referenced case to the United States District Court and again earlier today.

It is my understanding that on or about March 22, 2011, the FDIC sent you a letter informing you that your client had failed to comply with the administrative claims process that is a necessary prerequisite to the filing of a lawsuit arising out of your client's claims against the FDIC - Receiver. This FDIC letter also informed you that the FDIC Board of Directors has determined that the IndyMac Federal Bank receivership estate will lack funds sufficient to pay general creditors' receivership certificates. Therefore, even if your client has a righteous claim, there will be no funds available to pay your client.

With the above in mind, your continued prosecution of the lawsuit is a futile act. If you do not agree to a voluntary dismissal, I have been instructed to file a Motion to Dismiss your client's complaint for failure to file an administrative claim with the FDIC - Receiver prior to filing the lawsuit and the prudential mootness doctrine which, in effect says: even if you win, you cannot collect any money so don't waste the court's and parties' time and money. Attached is a typical memorandum of points and authorities citing law underlying such a Motion to Dismiss.

Please contact me upon your receipt of this letter and review of the attached authorities to let me know whether your client agrees to voluntarily dismiss this matter.

Very truly yours,

BURNHAM BROWN

Jack W. Schwartz, Jr.

JWS:gdr
Enclosure

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